

REMARKS

Claims 83-110 have been canceled.

Claims 1-82 remain pending in the application. Of these, claims 1 and 50 are currently amended. Applicant notes that amendments to claims 1, 44, 50 and 77 made in Amendment A (filed March 31, 2003) were not indicated in Amendment B (filed November 3, 2003) and that amendments to claims 51-76 and 78-82 made in Amendment A were inadvertently repeated in Amendment B. The claims are currently pending as presented in Amendment B and Applicant responds accordingly.

The claims are rejected under 35 U.S.C. 102(e) as anticipated by Edwards U.S. 5,505,730 (Edwards '730) or under 35 U.S.C. 103(a) based on Edwards '730 in view of Edwards et al. U.S. 5,558,672. The cited references do not teach or suggest, alone or in combination, an apparatus in which an energy delivery device is coupled to an expandable member, and in which the energy delivery device is configured to penetrate tissue and to controllably produce lesions of a sufficient size, number and configuration in an interior of the lower esophageal sphincter to create a tightening of the lower esophageal sphincter.

Claims 1-82 are rejected under the doctrine of obviousness-type double patenting over claims 1-88 of U.S. Patent No. 6,056,744 (the '744 Patent), claims 1-51 of U.S. Patent No. 6,254,598 (the '598 Patent), claims 1-5 of U.S. Patent No. 6,423,058 (the '058 Patent), and claims 1-40 of U.S. Patent No. 6,440,128 (the '128 Patent). Claims 1-82 are provisionally rejected under the doctrine of obviousness-type double patenting over the claims of copending Applications Serial Nos. 09/776,140 (the '140 Application), 09/971,085 (the '085 Application), and 10/084,590, now U.S. Patent No. 6,589,238 (the '238 Patent). Applicant will submit terminal disclaimers based on the '744 Patent, the '598 Patent, the '058 Patent, the '128, and the '238 Patent upon indication of allowable subject matter, but for the double patenting rejections. Applicant respectfully requests that any double patenting issues with respect to the instant Application and the '140 and '085 Applications be addressed upon the issuance of one case and the indication of allowable subject matter in the other case, but for the double patenting rejection.

Application Serial No. 09/911,874

Amendment C

Page - 11 -

Respectfully Submitted,

By Patricia A. Limbach
Patricia A. Limbach
Registration No. 50,295

RYAN KROMHOLZ & MANION, S.C.

Post Office Box 26618

Milwaukee, Wisconsin 53226

(262) 783 - 1300

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Customer No.: 26308

Case# 16792-CON/040310 AMENDMENT C

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